

**CIVIL SERVICE COMMISSION MINUTES
JANUARY 16, 2008**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

Francesca Krauel
W. Dale Bailey
A.Y. Casillas
Barry I. Newman

Absent was:

Cheryl Fisher

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
William D. Smith, Senior Deputy County Counsel

Selinda Hurtado-Miller, Reporting

**Approved
Civil Service Commission
February 6, 2008**

COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
JANUARY 16, 2008

1:30 P.M. CLOSED SESSION: Discussion of Personnel Matters
 and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
 Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
1,3,5,6,7,9,10,11, 13,14,15,16,17,18,27	13,14,15,16,17	7,8	12,23,24, 25,26

COMMENTS: Motion by Newman to approve all items not held for
discussion; seconded by Casillas. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

A. Commissioner Bailey: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) **Humberto
Bahena**, former Food Services Worker, appealing an Order
of Termination and Charges from the Sheriff's
Department.

B. Commissioner Bailey: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) **Alberto
Rios Garcia**, former Food Services Worker, appealing an
Order of Termination and Charges from the Sheriff's
Department.

OPEN SESSION AGENDA
County Administration Center, Room 358

ELECTIONS

1. Election of President and Vice President of the Civil Service Commission for 2008.

Motion by Newman to nominate W. Dale Bailey for President and A. Y. Casillas for Vice-President; Commissioner Newman explained that Commissioner Fisher asked to be taken out of rotation at this time, and Commissioner Casillas graciously accepted the post. Motion seconded by Krauel. Carried.

MINUTES

2. Approval of the Minutes of the regular meeting of December 5, 2007.

Approved.

DISCUSSION

Performance Appraisals

3. Response to Commission concerns regarding DHR Policy and Procedure 1003 - Employee Performance Appraisals: **Carlos Arauz**, Director, Department of Human Resources.

Carlos Arauz, Director of DHR, explained that the case in point was an aberration and has not been a county wide issue. He further stated that DHR Policy and Procedure 1003 stands on its own, and its purpose is to encourage communication between employees and their supervisors. Mr. Arauz assured the Commission that he would be reviewing this policy with the DPOs and would clearly enforce all policies and that they are not "guidelines."

CONFIRMATION OF REASSIGNMENT

4. Commissioner Krauel: **Aida Delgado**, former Office Assistant, requesting employment reinstatement with the Health and Human Services Agency. (Commissioner Fisher was originally assigned.)

Confirmed.

DISCIPLINE

Findings

5. Commissioner Bailey: **Humberto Bahena**, former Food Services Worker, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Humberto Bahena and Alberto Garcia [**see Agenda Item No. 6 below**] (hereinafter collectively referred to as "Employees") were Food Services Workers in the Sheriff's Department (hereinafter referred to as "Department"). They were terminated for their conduct related to an off-duty incident involving their detainment by San Diego Police officers (and arrest of one of them) for driving with an excessive blood alcohol level. The Employee who was driving was arrested and convicted as a result of driving with an excessive blood alcohol level. The Department terminated him because of the conviction and because of alleged dishonesty by reporting his resultant absence from work as due to illness and by concealing the other Employee's involvement in the incident. The other Employee was not arrested nor convicted. However, the Department terminated him for his conduct during the detainment, and for dishonesty similar to the arrested Employee.

Employees' detention and arrest were off-duty events, which shared no significant nexus with their job duties. Additionally, the Department failed to sustain their burden of proof to establish that one of the Employees attempted to incur favorable treatment by showing his Sheriff's Department identification. While the Department did prove some dishonesty in connection with the arrested Employee's absence from work, the Department failed to prove that such dishonesty extended significantly beyond that covered by County's Discipline Guidelines for falsely reporting an absence from work. The Department also failed to prove that such dishonesty was of the type to be included in its de facto zero tolerance policy for dishonesty by sworn law enforcement personnel. Accordingly, the discipline should be consistent with the County's Discipline Guideline. Although the Discipline Guide recommends a maximum of a five day suspension for a first offense involving dishonesty in connection with absences from work, the dishonesty in this case extended a little beyond simply the absence. It included an attempt to conceal involvement in the off-duty arrest.

It is therefore recommended that the Orders of Termination for each of the Employees be modified to a thirty day suspension; that Employees be awarded back pay, benefits and interest from the dates of the Orders of Termination to the date of this decision, minus any wages they received from outside employment, and minus wages attributable to the time of the suspensions; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Bailey to approve Findings and Recommendations; seconded by Casillas.

Prior to voting on this motion the following was discussed:

Commissioner Newman stated: "I have a problem with the recommendation. I believe that in a culture which has as probably one of its highest values - honesty, that employees, even though not sworn employees and therefore not held to the same standard as sworn employees, that honesty is a critical piece. I would have preferred a ninety-day suspension - I concur with the recommendations that termination is not warranted or justified - I would have preferred a ninety-day suspension, but believing that I could not get a second to that amendment, I am not making a motion to amend the recommendation and I will be voting for it."

Commissioner Krauel stated: "I cannot support the recommendation because the Sheriff's Department presented no evidence that either employee had notice of the department policies and rules that they have alleged to have violated. Discipline under these circumstances would be a violation of the employees' due process. The Department cannot impose discipline without notice to employees. This resolves it for me. Nevertheless, I want to address some of the other issues that were raised in the recommendation that was just read. Had there been notice to the employees, I differ from the recommendation in that as to employee Garcia, I believe the Department did meet its burden in showing that the intemperate charge - that his actions did violate the Department regulations in the intemperate use of alcohol off duty. But I find that the discipline is too severe given that Mr. Garcia is a food service worker and not a deputy of any kind. I believe that the Department failed to meet its burden

regarding employee Bahena in alleging that the intemperate use of alcohol off duty, because a police officer testified that Mr. Bahena was sober enough to walk home from where the incident occurred and the Department offered no other standard to help the Commission decide what the level of intemperate behavior would be other than that which the police officer chose not to arrest him. Suspension without pay is appropriate for Mr. Bahena's attempts to mislead the Department regarding Mr. Garcia's absence from work. Again, this is relevant only if the Department had provided evidence that the employees had notice of these rules, and it did not - so I am voting "No".

Motion carried.

AYES:	BAILEY, CASILLAS, NEWMAN
NOES:	KRAUEL
ABSENT:	FISHER
ABSTENTIONS:	NONE

6. Commissioner Bailey: **Alberto Rios Garcia**, former Food Services Worker, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

See Item No. 5 above.

Motion by Bailey to approve Findings and Recommendations; seconded by Casillas. Discussion. Motion carried.

AYES:	BAILEY, CASILLAS, NEWMAN
NOES:	KRAUEL
ABSENT:	FISHER
ABSTENTIONS:	NONE

DISCRIMINATION

Complaints

7. **Carrie Thomas**, former Animal Service Representative, alleging disability discrimination by the Department of Animal Services.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Having never been before the Commission, Ms. Thomas requested clarification regarding the disposition of this item. The Commission explained to her that her complaint was in the process of being referred to the Office of Internal Affairs for investigation, and that a hearing officer is being assigned.

Motion by Newman to accept staff report; seconded by Casillas. Carried. Commissioner Bailey assigned.

8. **Mary Ann Knockeart**, Deputy Alternate Public Defender IV, alleging gender discrimination by the Office of the Alternate Public Defender. (See Item No. 14 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Newman assigned.

Commissioner Krauel did not participate in this item.

Findings

9. Commissioner Newman: **Trayvone Broadway**, former Stock Clerk, alleging age, race and non-job-related factor (dress code) discrimination by the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on September 5, 2007, the Commission appointed Barry I. Newman to investigate the complaint submitted by Trayvone Broadway, which alleged age, race, and non-job-related factor (dress code) discrimination by the Sheriff's Department. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission. The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer who concurs with OIA's Report and has concluded that The evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Mr. Broadway's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary

Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

Motion by Newman to approve Findings and Recommendations; seconded by Casillas. Carried.

10. Commissioner Casillas: **Deborah Thomas**, Deputy District Attorney III, alleging retaliation discrimination by the Office of the District Attorney.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on September 5, 2007, the Commission appointed A.Y. Casillas to investigate the complaint submitted by Deborah Thomas, which alleged retaliation discrimination by the Office of the District Attorney. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission. The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Ms. Thomas' Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

Motion by Casillas to approve Findings and Recommendations; seconded by Newman. Carried.

AYES:	BAILEY, CASILLAS, NEWMAN
NOES:	NONE
ABSENT:	FISHER
ABSTENTIONS:	NONE
NOT PARTICIPATING:	KRAUEL

11. Commissioner Fisher: **Gloria Rudolph**, Administrative Analyst II, alleging retaliation, age and non-job related factor (hostile work environment) discrimination by the Probation Department.

FINDINGS AND RECOMMENDATIONS:

Commissioner Bailey read the following findings on behalf of Commissioner Fisher:

At the regular meeting of the Civil Service Commission (Commission) on September 5, 2007, the Commission appointed Cheryl Fisher to investigate the complaint submitted by Gloria Rudolph, which alleged retaliation, age and non-job-related factor (hostile work environment) discrimination by the Probation Department. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation and has reported its findings to the Commission.

The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Ms. Rudolph's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

Motion by Bailey to approve Findings and Recommendations; seconded by Casillas. Discussion:

Commissioner Newman commented that he would vote for the recommendation, however, he wanted to point out that on page 9 of the OIA report, there was language that was of concern to him. The employee (having received an overall "Standard" rating on her performance appraisal) had requested that her supervisor change some of the "standard" marks to "above-standard", because, as the OIA report stated, the supervisor "didn't have a problem with that so she changed them". The language in the OIA report troubled Commissioner Newman who stated that changing the ratings was fine, if indeed the employee was deserving of the change, but not if the Supervisor "didn't have a problem."

Motion Carried.

SELECTION PROCESS

Appeals

12. M. Gayle Askren, Esq. on behalf of **Jay Shaffer, M.D.**, appealing his non-selection for the classification of Psychiatrist II by the Health and Human Services Agency.

RECOMMENDATION: Deny Request.

Withdrawn.

13. **Barton Sheela**, Deputy Alternate Public Defender IV, appealing his non-selection for the classification of Deputy Alternate Public Defender V by the Office of the Alternate Public Defender.

RECOMMENDATION: Deny Request.

Mr. Sheela spoke to the Commission regarding this item as well as item nos. 14, 15, 16 and 17. He requested a continuance on these matters because the parties are in the process of meeting with/obtaining counsel.

Motion by Newman to continue this matter; seconded by Casillas; carried.

AYES:	BAILEY, CASILLAS NEWMAN
NOES:	NONE
ABSENT:	FISHER
ABSTENTIONS:	NONE
NOT PARTICIPATING:	KRAUEL

14. **Mary Ann Knockeart**, Deputy Alternate Public Defender IV, appealing her non-selection for the classification of Deputy Alternate Public Defender V by the Office of the Alternate Public Defender. (See Item No. 8 above.)

RECOMMENDATION: Deny Request.

See Item No. 13 above. Continued.
Commissioner Krauel did not participate in this item.

15. **Steven Wadler**, Deputy Alternate Public Defender IV, appealing his non-selection for the classification of Deputy Alternate Public Defender V by the Office of the Alternate Public Defender.

RECOMMENDATION: Deny Request.

See Item No. 13 above. Continued.

Commissioner Krauel did not participate in this item.

16. **Liesbeth van den Bosch**, Deputy Alternate Public Defender IV, appealing her non-selection for the classification of Deputy Alternate Public Defender V by the Office of the Alternate Public Defender.

RECOMMENDATION: Deny Request.

See Item No. 13 above. Continued.

Commissioner Krauel did not participate in this item.

17. **Dale Santee**, Deputy Alternate Public Defender IV, appealing his non-selection for the classification of Deputy Alternate Public Defender V by the Office of the Alternate Public Defender.

RECOMMENDATION: Deny Request.

See Item No. 13 above. Continued.

Commissioner Krauel did not participate in this item.

18. **Ronald Moore**, applicant, appealing the Department of Human Resources' determination that he is ineligible to compete in the selection process for the classification of Road Maintenance Worker.

RECOMMENDATION: Deny Request.

Staff recommendation approved on Consent Agenda. However, Mr. Moore appeared late and requested to be heard on this matter. The Commission voted to reconsider:

**Motion by Newman to reconsider; second by Casillas.
Carried.**

Mr. Moore addressed the Commission regarding his appeal. He stated that he felt he had done well on the exam for Road Maintenance Worker and was confused regarding his test score.

Susi Kuklinski, HR Manager for the Department of Human Resources, stated that Mr. Moore did have a 10 day period wherein he could have reviewed his answers against the Test Key. Mr. Moore replied that he had not reviewed the Key, because he was looking for a more thorough review of the testing materials.

The Commission decided to adopt staff's recommendation, with the condition that DHR allow Mr. Moore to review his answer sheet with the Test Key, as soon as possible, even though the ten-day review period had expired. Both DHR and Commission staff recommended study materials that Mr. Moore might benefit from for future testing opportunities.

The Commission requested that DHR report back to staff at the next CSC meeting (February 6, 2008) that the review had taken place between DHR and Mr. Moore.

Motion by Newman to accept staff recommendation with the condition that DHR's commitment will not be restricted by the ten-day period to share Mr. Moore's answer sheet and the Test Key with Mr. Moore and report back. Seconded by Casillas. Carried.

19. Reverend Jovencio Ricafort, on behalf of **Mildred Gutierrez**, applicant, appealing the Department of Human Resources' determination that she is ineligible to compete in the selection process for the classification of Environmental Health Specialist Trainee.

RECOMMENDATION: Deny Request.

Staff Recommendation Approved.

Findings

20. **Jarrold Gathman**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet.

21. **Zane Maltsberger**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet.

22. **Jason Wentt**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet.

RECOMMENDATION: Ratify Item Nos. 20 - 22. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 20-22 ratified.

OTHER MATTERS

Extension of Temporary Appointments

23. Department of Agriculture, Weights and Measures

1 Insect Detection Specialist II (Victoria Galloway)

RECOMMENDATION: Ratify.

Withdrawn.

INFORMATION

24. Mark Bennett, Esq., on behalf of **Linda Brown** and **Susan Clemens**, Deputy Public Defenders IV, withdrawal of complaints alleging gender discrimination by the Office of the Public Defender. (Commissioner Bailey)

Withdrawn.

25. **Albert Bradley**, Deputy Alternate Public Defender IV, Office of the Alternate Public Defender, withdrawal of request for a classification review under Civil Service Rule XII. (Commissioner Casillas)

Withdrawn.

26. **Terrence Parks**, Library Technician III, withdrawal of complaint alleging gender discrimination by the County Library. (Commissioner Newman)

Withdrawn.

27. Commissioners' Closing Remarks

Commissioner Bailey expressed the Commission's appreciation to out-going President, Francesca Krauel, for her service and dedication to the Civil Service Commission. Patt Zamary, Executive Officer, on behalf of staff, also thanked Commissioner Krauel.

28. Public Input.

ADJOURNED: 3:25 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:

FEBRUARY 6, 2008